IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4771 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALSAD JILLA SAHAKARI BANK LTD - Petitioner(s)

Versus

CONCILIATION OFFICER & 1 - Respondent(s)

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Appearance :

MR C G GOVINDAN for MR AK CLERK for Petitioner No(s).: 1.

M/S PATEL ADVOCATES for Respondent No(s).: 1.
MR MUKESH H RATHOD for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 28.02.1994 passed by the Conciliation Officer, whereby the petitioner was directed to reinstate respondent no.2

to his original Post with continuity of service and full back wages.

2.0 The brief facts of the case are that respondent no.2 herein was appointed on probation by the petitioner. It is the case of the petitioner that respondent no.2 was appointed by the outgoing Management of the Bank on the eve of the supersesion of the Board of Directors. Therefore, the services of respondent no.2 were terminated.

2.1 Pursuant to the above, the Registrar (CS) issued Show Cause Notice dated 19.05.1992 to show cause as to why an Administrator be not appointed in the place of the Board of Directors. Thereafter, by order dated 01.07.1992, the Registrar appointed an Administrator. The said order came to be challenged before this Court by way of Special Civil Application No.4438 of 1992 and 4529 of 1992. This Court, by order dated 03.07.1992 granted ex-parte injunction restraining the Administrator from taking over the charge. Later on this Court modified the ad-interim relief by appointing a Committee to act as Administrator which was to take charge on 25.07.1992.

2.2 It is the case of the petitioner that prior to the appointment of the Administrator, interview letters for new appointments were already issued and several irregularities had taken place in the recruiting procedure. Since the appointment of respondent no.2 and others was on probation, the Committee of Administrators passed a resolution on 12.08.1993 to terminate the services of respondent no.2 and others. However, before the order of termination could be served, respondent no.2 filed a complaint u/s.33A of the Industrial Disputes Act, 1947 before the Industrial Tribunal, Surat in a pending Reference (IT) No.140 of 1987 and obtained an ex-parte injunction restraining the bank from terminating his services.

2.3 On 28.02.1994 the Conciliation Officer by exercising powers u/s.33(1)(b) directing the petitioner to reinstate the respondent to his original post with continuity of service and full back wages. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 31.03.1994, this Court has passed the following order;

"Rule. Heard Mr.H.K.Rathod who appears on caveat for respondent no.2. Respondent no.2 has also filed his counter.

So far as the question of interim relief is concerned, it is contended by Mr.Clerk that there are number of questions involved for determining the legality or otherwise of the order of the Conciliation Officer under challenge. It appears that the Conciliation Officer has granted the application on a technical ground of non-compliance of Sec.33(1)(b) of the Industrial Disputes Act, 1947. In view of the said breach, the impugned order is passed. Mr. Clerk contended that in the case of Punjab Beverages Pvt. Ltd. v. Suresh Chand & Anr. (A.I.R. 1978 S.C. 995) it is held that the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal. The very fact that even after the contravention of Sec.33 is proved, the Tribunal is required to go into the further question whether the order of discharge or dismissal passed by the employer is justified on the merits, clearly indicates that the order of discharge is not rendered void and inoperative by such contravention.

To appreciate this contention, it is necessary to refer to some of the facts of the case and the salient features thereto are as under:-

That this Court in S.C.A.No.4438/1992 and 4528/1992 while considering the challenge of appointment of Administrator, has appointed a Committee to take over the administration of the petitioner Bank. The said order came to be passed on 23.07.1992. Respondent no.2 claims to have been appointed by an order dated 30.06.1992. Said order was served personally on him and was asked to take over charge on 23.07.1992. In view of the order passed by this Court to appoint a committee, the Committee has taken over the charge on 25.07.1992. The said Committee after considering the appointments of the respondent no.2 and others and after coming out of the

litigation, has passed a resolution on 12.08.1992 and canceled all the appointments made by the previous management vide order dated 30.06.1992. There were as many as 37 employees employed. When the resolution of 12.08.1992 was made effective on 06.09.1993, the respondent no.2 has filed a complaint under Sec.33A of the Industrial Disputes Act, 1947. Prior to this, in view of the earlier litigation between the Union of which respondent no.2 is a member and the petitioner Bank, it was held and decided by the Industrial Tribunal that the Central Government is the appropriate Government. Some of the employees, whose services came to be terminated by the resolution of 12.08.1992 had also filed complaints under Sec.33A. Said complaints also came to be dismissed on that ground. In the said complaints, respondent no.2 was also one of the complainants. Said complaints came to be dismissed on the ground that the appropriate Government is the Central Government and not the State Government and the State Conciliation Officer has no authority to decide the complaints. Despite these facts, it appears that the Union on behalf of the respondent no.2 has raised dispute on 28.087.1993 before the State Government as well as the Central Government. In view of the pendency of this demand, when the petitioner passed a resolution terminating the services in compliance with its resolution of 12.08.1992 on 06.09.1993, respondent no.2 filed a complaint u/s.33A before the Conciliation Officer of the State Government.

Question before this Court in challenge of the said passed by the Conciliation Officer of the State Government is also one of the ground of jurisdiction. When question of jurisdiction has already been decided earlier and despite that fact when the State Government has again gone into the matter, the question of jurisdiction still requires to be determined afresh by the authority. However, there is a prima facie case in favour of the petitioner that Conciliation Officer of the State Government has no jurisdiction.

Keeping all these facts in mind, I am of the

opinion that petitioner has proved that there is a prima facie case and the balance of convenience is in its favour, in view of the fact that order of appointment has come to be passed in the circumstances stated herein above.

Mr.H.K.Rathod learned counsel appearing for the respondent no.2 has contended before this Court that the legality of the order of appointment of the respondent no.2 is not under challenge anywhere. However, I am of the opinion that this question can also be gone into while deciding the question of jurisdiction as well as technical breach of Sec.33 when the Court decides the same.

Mr. Rathod further contended that in case if this Court is of the opinion to stay the operation of the order passed by the Conciliation Officer, then in that case the Court may not order stay of the wages in view of the provisions of Sec.17-B of the Industrial Disputes Act, 1947. If one reads Sec.17-B, it is very clear that it refers only to awards and not orders passed by any authority other than those referred to in Sec.17-B. Conciliation Officer is not an authority referred to in Sec.17-B of the Industrial Disputes Act, 1947. Mr. Rathod in support of his contention has relied on two judgments, one of Calcutta High Court and other of Rajasthan High Court to show that any order of reinstatement with back wages should not be stayed in view of the provisions of Sec.17-B. In the case of The New India Assurance Co. Ltd. v. The Central Industrial Tribunal, Jaipur & Anr. (1993(II) LLJ 26) i.e. Rajasthan High Court, an award was under. I do not dispute that if there is an award passed by the authority referred to in Sec.17-B, then provisions of Sec.17-B are indisputably squarely attracted. However, it is not so in the instant case. So far as Calcutta High Court case is concerned, it is the case of Sameer Ali v. Kesoram Industries & Cotton Mills Ltd. & Anr. (1988 (1) LLJ 1). In that case, there was an order under S.33(2)(b), which was in the opinion of the Judges of the Calcutta High Court to be inclusive of award. That order was passed by the Industrial Tribunal, West Bengal. Now, if

> one reads the definition of the word 'award' as defined in Sec.2(b) of the Industrial Disputes Act, it includes an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Sec.10-A. Thus, an order passed by Industrial Tribunal in Calcutta case was an order passed by an Industrial Tribunal in an industrial dispute, which is clearly covered by the definition of the word 'award' and Sec.17-B refers to the word 'award' passed by the Labour Court, Industrial Tribunal or National Industrial Tribunal. Therefore, the judgment in the case of Calcutta High Court covers the word 'award' and in the instant case, the order is neither passed by the Labour Court, Industrial Tribunal or National Industrial Tribunal nor is it passed as an interim or a final order in determination of an industrial dispute between the parties. Therefore, in my opinion, the provisions of Sec.17-B are not attracted in the instant case. This order is passed for the purpose of interim relief only.
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> In the result, interim relief in terms of Para 25(A) is granted."

4.0 I have heard learned counsel for the parties and perused the documents placed on record. Looking to the facts and circumstances of the case, the petition is allowed in terms of the interim relief granted by this Court by the aforesaid order. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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